

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

RCRev..No. 111 of 2007

RCA.51/2001 of RENT CONTROL APPELLATE AUTHORITY, TRIVANDRUM
RCP.83/2000 of RENT CONTROL COURT, TRIVANDRUM

REV.PETITIONER/APPELLANT/2ND COUNTER-PETITIONER:

**JAYASEELAN NAIR, S/O. S.MADHAVAN NAIR,
RESIDING AT T.C.20/2615, RAJALEKSHMI BUILDING,
KARAMANA, THIRUVANANTHAPURAM.**

**BY ADV. SRI.M.R.ANANDAKUTTAN
SMT.M.HEMALATHA
SRI.R.S.MADHU
SRI.MAHESH ANANDAKUTTAN**

RESPONDENTS/RESPONDENTS/PETITIONERS & 1ST CR-PETITIONER:

- 1. RAJEE.B.AMBADY, W/O. DR.B.M.AMBADY(LATE)
RESIDING AT RAJALEKSHMI, C2, BELHEVAN GARDEN,
KOWDIAR, THIRUVANANTHAPURAM.**
- 2. LEELA MURALEEDHARAN, RESIDING AT LAVANYA,
VIKRAMAPURAM HILL, KURAVANKONAM,
THIRUVANANTHAPURAM.**
- 3. N.SUBHASH CHANDRAN, 267/1, RAHAF BAGH ENCLAVE,
OFF. OLD MADRAS ROAD, BANGALORE - 5600931.**
- 4. M.SATHEESH CHANDRAN, C-9714,
VASANTKUNJI, NEW DELHI.**

**5. LAKHA M.PALAT, 53, DAKSHINAPURAM,
TNU CAMPUS, NEW DELHI - 110 067.**

**6. LATHA MENON SHREE, CERUMANASSERI ROAD,
PANNIANKARA, KOZHIKODE - 673 003.**

**7. T.R.RADHAKRISHNA WARRIER,
S/O. RAMA WARRIER, T.C.20/2651, 1ST FLOOR,
RAJALEKSHMI BUILDING, KARAMANA,
THIRUVANANTHAPURAM.**

BY ADV. SRI.MANOJ R.NAIR

**THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION
ON 12/06/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 111 of 2007

ORDER

Balachandran, J.

The second counter petitioner in R.C.P No.83/00 on the file of the Rent Control Court, Thiruvananthapuram is the revision petitioner. Respondents 1 to 6 filed petition for eviction against the seventh respondent and the petitioner under Sections 11(2) (b), 11(3) and 11(4) (i) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). Eviction was allowed by the Rent Control Court on all the above grounds. The petitioner filed R.C.A. No.51/01 before the Rent Control Appellate Authority, Thiruvananthapuram impugning the correctness of the order of eviction passed in favour of respondents 1 to 6 under Sections 11(2) (b), 11(3) and 11(4) (i) of the Act. When the appeal came up for hearing, it was submitted that the first respondent, for whose

bona fide need eviction was claimed under Section 11(3) of the Act, expired. Hence, eviction under Section 11(3) of the Act was negatived by the appellate authority, but order of eviction under Sections 11(2)(b) and 11(4)(i) of the Act was confirmed. The petitioner challenges the concurrent order of eviction so passed by the authorities below under Sections 11(2)(b) and 11(4)(i) of the Act.

2. No argument was advanced before us assailing the order of eviction passed under Section 11(2)(b) of the Act. It is contended by the learned counsel for the petitioner that the tenancy was in favour of the petitioner in relation to the scheduled building and that Agency of Kottakkal Arya Vaidyasala is being run by his wife in the scheduled building and there is no sub letting as contended. The first counter petitioner, who is the seventh respondent in this revision, has remained absent and ex parte in the rent control

proceedings throughout. Exhibit A2 is the rent deed proved by PW1 as the rent deed executed by the seventh respondent in her favour. It specifically says that the seventh respondent is entrusted with the building for conduct of Agency of Kottakkal Arya Vaidyasala in his name. Exhibit A2 further prohibits sub letting. It is pointed by the counsel for respondents 1 to 6 that Exhibit A6 notice informing of the sub lease effected in violation of the terms of the lease was issued to the seventh respondent on 13.3.2000, that the said notice was received by him on 11.4.2000 under Exhibit A7 postal acknowledgment card; that a copy of the said notice was forwarded to the petitioner and that was received by him under Exhibit A7(a) postal acknowledgment card on 24.3.2000 and that despite the specific allegation of sub letting of the scheduled building by the seventh respondent in favour of the petitioner, neither the seventh respondent nor the petitioner has issued any reply

thereto. It is worthy to note that if at all the petitioner was holding the scheduled building on tenancy arrangement with respondents 1 to 6 and was not in possession of the scheduled building under any sub tenancy from the seventh respondent, he would have certainly replied to the said notice stating the real facts as an ordinary prudent man would do in the circumstances. The fact that he has not issued reply to the said notice received by him under Exhibit P7(a) postal acknowledgment card goes a long way to belie the case set up by the petitioner. We see no reason to interfere with the concurrent findings of the authorities below in ordering eviction on the ground of sub letting, under Section 11(4)(i) of the Act, in this revision. This revision, in the circumstances, is devoid of merit and deserves only to be dismissed.

3. Finally, it is urged by the counsel for the petitioner that the petitioner may be granted six months time to surrender vacant possession of the

scheduled building, as he is conducting Agency business of Kottakkal Arya Vaidyasala and some time is required to have the business shifted to some other building. The request so made is not seriously opposed by the counsel for respondents 1 to 6.

In the result, we dismiss this Rent Control Revision, confirming the concurrent order of eviction passed by the authorities below under Sections 11(2)(b) and 11(4)(i) of the Act. At the same time we grant the petitioner time upto 31.12.2007 to surrender vacant possession of the scheduled building to respondents 1 to 6 on the following conditions:

i. that he shall deposit all rents in arrears till date before the execution court on or before 30.6.2007.

ii. that he shall file affidavit before the execution court reporting the details of rents so deposited and undertaking unconditionally that he

shall surrender vacant possession of the scheduled building positively on or before 31.12.2007. Affidavit shall be filed positively on or before 30.6.2007 and

iii. that in case arrears of rents are not cleared by depositing before the execution court and affidavit as aforesaid is not filed on or before 30.6.2007, the petitioner shall not be entitled to continue in occupation of the scheduled building till 31.12.2007 and he shall be liable to be evicted in execution of the order of eviction immediately after 30.6.2007.

(J.B.Koshy, Judge)

12th June, 2007

(K.P.Balachandran, Judge)

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